

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 94-1551

September Term, 1994

Action on Smoking and Health,

Petitioner

v.

Department of Labor, et al.,

Respondent

United States Court of Appeals  
For the District of Columbia Circuit

FILED NOV 22 1994

RON GARVIN  
CLERK

BEFORE: Ginsburg, Sentelle and Rogers, Circuit Judges

O R D E R

Upon consideration of the motion to dismiss, the response thereto, and the reply; and the motion to expedite the case and the response thereto, it is

ORDERED that the motion to dismiss be granted. Action on Smoking and Health's ("ASH") claim of future unreasonable delay is not ripe for judicial review. Because OSHA could still issue its final rule within 120 days from the conclusion of the hearing, we cannot say that OSHA's rulemaking will, in all likelihood extend beyond the schedule set forth in the Cancer Policy. Furthermore, OSHA could determine that it is unable to issue a final rule within that period and, consistent with the Cancer Policy, take an additional 120 days to issue its final rule. In addition, because no legal consequences attach to OSHA's inclusion of environmental tobacco smoke in the proposed omnibus rulemaking, it is premature for us to consider ASH's challenge to the nature of OSHA's proposed rulemaking. It is

FURTHER ORDERED that respondent's motion to defer filing the certified index to the record be dismissed as moot.

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See D.C. Cir. Rule 41.

Per Curiam

DA  
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